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Attorneys for Plaintiffs,
SONY BMG MUSIC ENTERTAINMENT;
and UMG RECORDINGS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; and UMG
RECORDINGS, INC., a Delaware corporation,

Plaintiffs,

v.

JOHN DOE #9,

Defendant.

CASE NO. 3:07-CV-04855-SI

Honorable Susan Illston

***EX PARTE APPLICATION TO EXTEND
TIME TO SERVE DEFENDANT AND
[PROPOSED] ORDER***

1 Plaintiffs respectfully request, pursuant to the Federal Rules of Civil Procedure, Rules 4(m)
2 and 6(b)(1)(A), that the Court grant an additional 90 days to serve Defendant with the Summons and
3 Complaint. As further explained below, Plaintiffs believe they have discovered the identity of the
4 Doe defendant in this case and have contacted this person in an attempt to resolve the dispute
5 without further litigation; Plaintiffs thus seek additional time to effectuate service in the event the
6 dispute is not resolved and Plaintiffs file a First Amended Complaint naming Defendant
7 individually. In support of their request, Plaintiffs state as follows:

8 1. The current deadline for service of process is January 18, 2008. The initial
9 case management conference is set for April 18, 2008, at 2:00 p.m. The case management
10 conference was continued twice, once by the Court of its own accord and once upon Plaintiffs'
11 request by the Court's Order of December 21, 2007.

12 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant
13 John Doe #9 ("Defendant") on September 20, 2007. Plaintiffs did not have sufficient identifying
14 information to name Defendant in the Complaint, but were able to identify Defendant by the Internet
15 Protocol address assigned to Defendant by Defendant's Internet Service Provider ("ISP") – here, San
16 Francisco State University.

17 3. In order to determine Defendant's true name and identity, Plaintiffs filed their
18 *Ex Parte* Application for Leave to Take Immediate Discovery on September 20, 2007, requesting
19 that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.
20

21 4. The Court entered an Order for Leave to take Immediate Discovery on
22 October 10, 2007, which was promptly served upon the ISP along with a Rule 45 subpoena. On
23 November 16, 2007, the ISP responded to Plaintiffs' subpoena, identifying the individual associated
24 with the Internet Protocol address supplied to the ISP by Plaintiffs.

25 5. On December 4, 2007, Plaintiffs sent a letter to the individual identified by the
26 ISP, notifying her of Plaintiffs claims and encouraging her to contact Plaintiffs to attempt to
27 amicably resolve this matter. Plaintiffs later contacted this individual by telephone and presented a
28 settlement offer. However, in subsequent telephone conversations beginning on January 4, 2008, the

1 individual claimed to have been misidentified, and provided Plaintiffs' the name and telephone
2 number of a second person whom she believed may have used her internet connection to commit the
3 copyright infringements alleged in Plaintiffs' Complaint.

4 6. Plaintiffs have since investigated the claim of misidentification, and believe
5 this second individual to be responsible for the copyright infringements alleged in the Complaint.
6 Plaintiffs have initiated settlement discussions with this second individual. If the case can be
7 promptly resolved with the second individual, Plaintiffs will file the appropriate dispositional
8 documents. If the matter cannot be promptly resolved, Plaintiffs will amend their Complaint to
9 name this person as the individual defendant and serve the First Amended Complaint upon him.

10 7. Given the circumstances of this case, Plaintiffs respectfully request an
11 additional 90 days to effectuate service.

12 8. Plaintiffs submit that their efforts to give written notice of their claim to the
13 individual originally identified by the ISP, their subsequent investigation of that individual's
14 misidentification claim, and their current efforts to resolve the case without further litigation
15 constitute good cause for any delay in perfecting service. *See Ritts v. Dealers Alliance Credit Corp.*,
16 989 F. Supp. 1475, 1479 (N.D. Ga. 1997) (stating good cause standard for service extensions).
17 Moreover, unlike a traditional case in which the defendant is known by name and efforts to serve can
18 begin immediately after filing the complaint, in this case Plaintiffs first had to obtain the identity of
19 the defendant through the subpoena to the ISP and investigate a claim of misidentification. This
20 Court has discretion to enlarge the time to serve even where there is no good cause shown.
21 *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

22 9. Because the copyright infringements here occurred in 2007, the three-year
23 limitations period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus
24 be no prejudice to the Defendant from any delay in serving the Complaint.
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10. Plaintiffs will provide the Defendant with a copy of this request and any Order concerning this request when service of process occurs.

Dated: January 17, 2008

HOLME ROBERTS & OWEN LLP

By: /s/ Matthew Franklin Jaksa

MATTHEW FRANKLIN JAKSA

Attorney for Plaintiffs

ORDER

Good cause having been shown:

IT IS ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to April 17, 2008.

Dated: _____

By: _____



Honorable Susan Illston
United States District Judge